

REMARKS

The following Remarks are fully responsive to the Office Action set forth above. Claims 28-36 are pending in the current application. In the above-identified Office Action, the Examiner rejected claims 28-36. By this Amendment and Response, the Applicant has amended claim 28. No new matter is added.

Claim Rejections – 35 USC § 102(e)

Claims 28-36 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 6,508,756 (“Kung”). The Office Action states that it is reasonable to assume that the device of the Kung patent could fit over the pericardium of some hearts, and that placing the claimed device over the patient’s pericardium is a statement of intended use. The Applicant respectfully disagrees with this position. Nevertheless, without acquiescing and reserving all rights, the Applicant has amended claim 28 to more particularly point out and distinctly claim the subject matter of the claimed invention.

Specifically, the Applicant has amended claim 28 to recite that the claimed jacket is sized and shaped to be applied over a pericardium of the heart. As is known in the art, the pericardium refers to the double-walled sac enclosing the heart. It is respectfully submitted that a cardiac reinforcement device shaped to be applied to the epicardium (i.e., below the pericardium) would not have a size and shape suitable to be applied over the pericardium, which is contoured and shaped differently than the underlying epicardium.

The Kung patent, however, discloses a girdle applied to the epicardium. *See, e.g.*, C.19:52-54 (“This design will accommodate spontaneous heart size reduction even though some parts of the mesh may adhere to the epicardium.”); C.20:4-5 (“The tissue engineered lining faces the patient’s myocardium.”). There is no disclosure of placing the girdle of the Kung patent over the pericardium. Accordingly, Kung does not disclose or suggest a jacket sized and shaped to be applied over a pericardium of the heart.

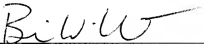
Accordingly, the Applicant asserts that claim 28 as amended is patentable over the teachings of the Kung patent, and is in condition for allowance. Additionally, claims 29-36,

which depend directly from claim 28, are patentable over the Kung patent and in condition for allowance for at least the same reasons.

A Notice of Allowance is respectfully requested.

Respectfully Submitted,

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